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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,766	03/22/2004	Mark Bergman	BERGO.008A	1254
20995 7590 02/27/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
RUNNING, RACHEL A				
ART UNIT		PAPER NUMBER		
3732				
NOTIFICATION DATE		DELIVERY MODE		
02/27/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/805,766

Applicant(s)

BERGMAN ET AL.

Examiner

RACHEL A. RUNNING

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 21-24 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2 and 31 is/are allowed.
- 6) ☒ Claim(s) 3-11, 21-24, 28-30 and 32-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-11 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 4, states "a wheel that rotates with the axle, a portion of the wheel accessible from outside of the housing" it appears as though applicant is reclaiming the ratcheting member from claim 3. It is unclear as to whether applicant is trying to claim two separate members or if "a wheel" is the same as "a ratcheting member". The claims will be examined as the wheel and the ratcheting member being the same part.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 3-8, 28, 29, and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergman (US 2002/0170570 A1).

Bergman discloses a hand-held flossing device comprising a housing having a handle portion (4) and a head portion (34) the housing supporting a floss supply comprising floss (30), a floss path (15), a floss advancement mechanism (22), and a stop mechanism (124) (see Figure 14). A wall (150) is disposed between the floss supply path and the floss return path in the housing head portion (see Figure 14; paragraph 51 and 52). A series of ratchet receiver members internally formed with the housing (see Figure 14). The floss supply path is defined within the housing between the floss supply and floss exit formed in the head portion, a floss return path defined within the housing between a floss entrance and the advancement mechanism (see Figure 14). The advancement mechanism-ratcheting member comprises a rotatable member having an axle (40), the rotatable member is disposed in the handle forwardly of the floss supply and the floss supply path extends past the rotatable member (see Figure 14; paragraphs 51 and 52). The stop mechanism comprises a friction lock (paragraph 48).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9-11, 21-24, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergman (US 2002/0170570 A1).

Bergman discloses the claimed invention except for the friction lock and advancement member being configured to apply between about 0-15 pounds of tension to the floss between the stop mechanism and the advancement mechanism, the head of the flossing device being bent up to about 45 degrees, the take-up mechanism and stop mechanism being configured to impart at least 4 pounds of tension to the floss, the floss having a yield strength greater than about 20 pounds, and the maximum tension limit is less than about 15 pounds.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the friction lock and advancement member be configured to apply between about 0-15 pounds of tension to the floss between the stop mechanism and the advancement mechanism, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the head of the flossing device be bent up to about 45 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the take-up mechanism and stop

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mechanism be configured to impart at least 4 pounds of tension to the floss, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have a floss yield strength greater than about 20 pounds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the maximum tension limit be less than about 15 pounds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233

Allowable Subject Matter

8. Claims 1, 2, and 31 are allowed.

Response to Arguments

9. Applicant's arguments filed December 3, 2007 have been fully considered but they are not persuasive.
10. In response to Applicant's argument that Bergman does not teach or suggest a series of ratchet receiver member integrally formed with the housing, Bergman does

teach a series of ratchet receiver members integrally formed with the housing (see Figure below).

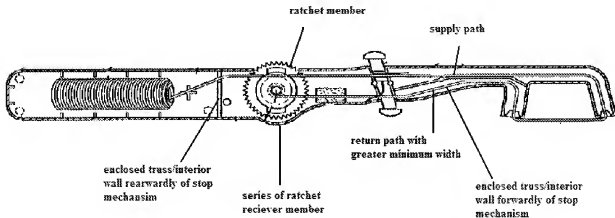
11. In response to Applicant's argument that Bergman teaches the supply path having a greater minimum width than the return path which is the opposite the claimed structure, however, Bergman does teach the return path having a greater minimum width along its length than the supply path (see Figure below).

12. In response to Applicant's argument that Bergman does not disclose an enclosed truss structure that comprises a plurality of interior walls and at least some of the interior walls interact to form an enclosed truss structure, and further the truss structure is disposed forwardly and rearwardly of the stop mechanism. Bergman does teach an enclosed truss structured as claimed by applicant which comprises a plurality of interior walls and at least some of the interior walls interacting to form an enclosed truss structure, and further the truss structure is disposed forwardly and rearwardly of the stop mechanism (see Figure below). It is also noted that claim 28 states "the housing is arranged and configured to include an enclosed truss structure", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

13. In response to Applicant's argument that claims 21 and 22 recite an important relationship that does not relate to optimum ranges, claim 21 and claim 22 states that the stop mechanism has a maximum tension limit and the floss has a yield strength

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greater than the maximum tension limit, however, one having ordinary skill in the art would be able to determine a maximum tension limit and a yield strength greater than the maximum tension limit of the Bergman device.



Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL A. RUNNING whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rachel A. Running
Examiner
Art Unit 3732

//Robyn Doan//
Primary Examiner, Art Unit 3732

